RNI No. MAHBIL /2009/31744
Reg. No. MCS/177/2016-18

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष २, अंक ११] गुरुवार ते बुधवार, मार्च १७-२३, २०१६/फाल्गुन २७-चैत्र ३, शके १९३७-१९३८ [पृष्ठे १६, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 2nd April 2005

NOTIFICATION

No. ALC./ ADJ/ PUB/ IT/ NAG/5/05.—in pursuance of section 17 of the industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA./2002/ 5686/ (2882) Lab-3, dated the19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court Nagpur reffered for adjudication by the Additional Commissioner of Labours, Nagpur in reference XIT/3/2000 in the Industrial Dispute between M/s. Chief Executive Officer, Zilla Parishad Nagpur. And Maharashtra State Zilla Parishad Karmachari Mahasangh Nagpur.

BEFORE THE INDUSTRIAL TRIBUNAL, NAGPUR

PRESIDED BY SHRI B. A. SHAIKH, B.Sc. LL.M .

REFERENCE (IT) No. 3 OF 2000.— Chief Executive Officer, Zilla Parishad , Nagpur—*Party No. 1*.— *And* Its workmen— represented by Maharashtra State Zilla Parishad Karmachari Mahasangh, Nagpur— *Party No. 2*—

IN THE MATTER OF REFERENCE UNDER SECTION 12(5)
OF THE INDUSTRIAL DISPUTES ACT, 1947.

Appearances.— Shri M. V. Mohokar, Adv., for Party No. 1

None for Party No. 2

Award

(Passed on 5th March 2005)

This is a reference made under Section 12(5) of the Industrial Disputes Act, 1947. It was fixed for oral evidence with effect from 14th Novemebr 2003 after the issues were framed at Exh. 14.

However, the party No. 2 at whose instance the reference was made adduced no oral evidence in support of its demands. The reference came to be adjourned for ten times till 18th February 2005 for evidence of the party No. 2. Lastly when it was found that the party No.2 was not interested in adducing oral evidence, the reference was adjourned to 28th February 2005 for order. On that date also the party No. 2 failed to appear before this Court.However, in the interest of justice, the reference came to be adjourned and again fixed for order on 2nd March 2005. On that date also the party No. 2 failed to appear before this Court. Again the reference came to be adjourned and fixed on 5th March 2005 i.e. today for order. Today also the party No. 2 failed to appear though called repeatedly from 11-30 a.m. to 5-30 p.m. today.The learned Advocate of the party No. 1 submitted that the party No. 2 is not interested in adducing evidence, the reference may be disposed of. I find substance in his said submission. In my view, when the party No. 2 is not interested in adducing oral evidence and when the demands made by it have not been substantiated by any oral evidence, the reference is required to be disposed of. Accordingly the following Award is passed.

Award

The reference, Exh. 1, is disposed of for want of evidence both parties shall bear their own costs. The proceedings are closed.

B. A. SHAIKH,
Presiding Officer,
Industrial Tribunal, Nagpur.

Nagpur,
Dated the 5th March 2005.

Additional Commissioner of Labour,
Nagpur.

ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 2nd April 2005

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/3/05.—in pursuance of section 17 of the industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA./2002/ 5686/ (2882) Lab-3, dated the19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court, Nagpur reffered for adjudication by the Additional Commissioner of Labour, Nagpur in reference Adj/4/1981 in the Industrial Dispute between M/s. Mohanlal Hargovinddas Tobacco Pro. Pvt. Ltd., Gondia And President Maharashtra Rajya Bidi Mazdoor Sangh Kamptee, Dist. Nagpur.

BEFORE V. G. KHARE, B.SC. LL.B.

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, NAGPUR

REFERENCE (IT) No.4 OF 1981.— Adjudication Between, M/s. Mohanlal Hargovinddas Tobacco Products Pvt. Ltd., Gondia, Tahsil Gondia, District Bhandara.—*Party No. 1*.— New Name M/s. Kohinoor Tobacco Products Pvt. Ltd., Bidi Manufacturers, Gol Bazar, Jabalpur, through its Director Shri Bdilal C. Pandaya. (Name is changed from 23rd September 1983 yet order of the Government about his change is not received.) *And* Its workmen— through the President, Maharashtra Rajya Bidi Majdoor Sangh, Kamptee, Dist. Nagpur— *Party No. 2*

IN THE MATTER OF REFERENCE UNDER SECTION 10(1) (d)
OF THE INDUSTRIAL DISPUTES ACT, 1947.

Advocates.— Shri S. K. H. Das, for Party No. 1

Shri Sonwane for Party No. 2

Award

(Passed on this 8th March 2005)

The assistant Secretary to the Government of Maharashtra, forwarded this reference under Section 10 (1) (d) of the Industrial Disputes Act, 1947 to this Court for adjudication by his letter dated 2nd January 1981. The dispute.

> "Whether the closure of the Industrial establishments of M/s. Mohanlal Hargovinddas of Tobacco products Pvt. Ltd., Gondia at Nileondi Mundri, Lakhani and Adyal in Bhandara District with effect from 1st September 1990, without living any previons notice in accordance with the provisions of Section 25-PF of the I. D. Act, 1947, is legal, proper and justified ? If not, to what relies, if any, the affect workmen are entitled ? "

2. After the receipt of this reference my then predecessor decided the reference by an Award on 23rd December 1983 holding that the reference is not maintainable in fact and in law and disposed of the reference. The writ petition was presented having No. 2727/91 challenging the interim order passed in this reference on 5th December 1984 by the then presiding officer Shri S. S. H. Quasi. While deciding that writ petition a direction as given by the Hon'ble High Court to decide whether it is proper to decide the preliminary issue first or to decide all issues together. After receipt of this direction this Court ascertained from the record the pleadings of the party and gave hearing to both the sides after securing the presence and held that considering the fact that the reference is of the year 1984 it is desirable to decide all the issues together.

3. This reference is arising out of the industry situated at Gondia, District Bhandara. Therefore, this Court made reference to the Hon'ble President, Industrial Court, Mumbai for transfer of this reference from this Tribunal to the Industrial Tribunal at Bhandara but that request was turned down by the President as per the order Exh. 61. Now the facts of the matter are as under.

4. The party No. 3 submitted the Statement of Claim *vide* Exh. 8. According to the party No.2, it is a registered union running in the name and State Maharashtra Rajya Bidi Majdoor Sangh, Kamitee for the workers in Bidi Industry employed in Bhandara District.

5. According to the party No.2 rolling of work of the Bidi was done by the workers in their dwelling house as no place for rolling bidi was provided by the Company. The respondent no.1 employed near about 40,000 workers in the district of Bhandara and total number of bidi manufactured is 40 millions. In each village and town in which rolling of bidi, that work is carried out under the supervision of the supervisor. The party No.1 used to entrust the tobacco and Bidi leaves to the supervisor for distribution amongst the workers and he used to keep the record of the group. The other activities relating to the banking, ledger book, etc. is carried out in the centre, i.e. in the industry.

6. The contention of party No.3 is that at 4 Centre where the bidi activities was going on they were closed down from 1st September 1980 and those Centre are at Nilagondi, Mundri Lakhani and Adyal. As a result of closure of the bidi manufacturing activities at the aforesaid centres supply of raw material to the Supervisor was stoped and from that date the supervisor was unable to provide work to the bidi binders.

7. Some of the bidi binders/workers were served with the notices dated 27th August 1980 issued by the Party No. 1 Company intimating that the services stood terminated with effect from 1st September 1980. The total number of workers who are effected and rendered uneomployed on account of closure of the part of bidi manufacturing work is estimated to be 5000.

8. The contention of party No.2 is that those four centres such as Nilacondi, Mundri, Lakhani and Adyal, the work was going there for more than 20 years. Therefore, the action of closure is not proper and there was no reason even to close those four centres. The way in which the closure is effected is not accordingly to law. The workers working for the company for years together and they were even no paid the retrenchment compensation, gratuity, etc. Therefore, the closure is not bonafide closure. The industry is not totally closed down. The other centres are still function. Last come first to that theory is to be applied. All of a sudden four centres were closed. That affects the rights of the workers. Not paying one month notice pay as per sec. 31 of Bidi and Cigar workers Act is a contravention of the provisions of law and on these grounds the contention of party No.2 is that very action of closure of four centres is bad in law. The workers, i.e., the members of the union or entitled for the benefits according to law.

9. Notice of this reference was served on party No.1 employer and the party No. 1 gave reply *vide* Exh. 9 denying the claim of the party No.2 in *toto*. According to the employer the very action of the reference by the State Government that action is an illegal action. The State Government is not empowered to forward such reference to the Court. In fact, there is no industrial dispute as defined under the Industrial Disputes Act. All the provisions of law are duly complied with. The question is very limited one. The statement of claim filed by the party No.2 is beyond frame of the reference and, therefore, it is liable to be rejected.

10. The contention of party No.1 is that the allegation that the closure of undertaking is without following the provisions of section 25-FFA of I.D. Act that is not proper. According to party No. 1 even if there is a non-compliance of section 25-FFA it does not make the closure of undertaking illegal, improper of unjustified. If the closure is real and in existence there is not industrial dispute within the meaning of I. D. Act.

11. According to party No.1 the Government has no power to refer such dispute for adjudication under Section 10 of I.D. Act because this issue is beyond the Section of Sec. 2(k) of I. D. Act. This dispute is beyond the meaning of Industrial Dispute. It is a fundamental right of the employer that he can close down his business whenever he chooses to do so.

12. According to party No.1 Bidi and Cigar workeres (Conditions of Employment) or, 1955 is a self contained code. Fee consider Section 39 of that Act there are provisions of I. D. Act are not applicable.

13. In par wise reply the party No.1 has denied the close of party No. 2 in *toto* and according to if the work was got done through the contractor. There is no relationship between the alleged workers and the company. The raw material supplied to the contractor and the contractor used to get manufactured the bidi and used to deliver these bidis in the factory. The relationship between the management and the employee stood between the by the closure of business of the company with effect from 1st September 1980. All others four undertaking mentioned is the statment of claim are closed. The contention of party No.1 is that it was not obligatory on the part of the party No.1 to give reasons for effecting the clouser because it is the right of the employer or owner of the company whatsover to proceed write the business or not. In sum and substance the party No.1 denied the claims in *toto*.

14. In the referance only one issue was referred to the Industrial Court. As certain objections were raised by the Party No. 1 in the written statement, consideration those objections and the direction clean by the Hon'ble High Court to the write Petition No. 2727/91 since Exh. 57 this Court Consider the following points for determination.

They are as under :—

Points		Findings
(1) Whether the closure of industrial co obligation of M/s. Mohanlal Hargovinddas Tobacco Products Private Ltd., Gondia at four places Allgondia, Mundari, Lakhani and Atyal in Bhandara District with effect from 1st September 1980 is hit by the provisions of oc. 25PPA of Industrial Disputes Act, 1947 ?	....	Non Respondant
(2) Whether the clouser of industrial establishment that action is legal, proper and justified ?	....	Redundant
(3) Whether the Government was having powers to make such a reference ?	....	No.
(4) What Award	....	As per final award.

Reasons

AS TO POINTS NOS. 1 TO 3 :

15. All those points are co-related and therefore, I would like to decide these simulteneously. In the presents case at hand from the said of party No. 1one Chitrap Patle deposed on oath at Exh. 62 for and on behalf of the management. On going through the evidence, and submission of both side it is clear that according to this witness the company used to give contract for a period of one year and for that there was an agreement between the company and the contractor. That work was assigned to the contractor on commission basic depending upon the production of bidi. The same contractor used to work with other company. On over all scrutiny of the evidence of witness no. 1 for party No. 1 Chitroo it is clear that his examination-in-chief is totally silent in regard to the fact that when the company moved the Government, whether any permission is obtained ? The clouser is of the year 1980. Therefore, in this matter old provisions will be applicable. One of the objection raised by the party No.1 is in regard to the applicability of provisions of the I. D. Act. According to the party No.1 Bidi and Cigar workers (Conditions of employment) Act, 1960 prohibits the application of the provisions of I. D. Act is view of the provisions of sec. 39 of that the Act. On perusal of section 39 of Bidi and cigar workers (Conditions of employment) Act, 1966 it is clear that there is no such bar of application of I. D. Act. Sec. 39 it reads as under :

Sec. 39.—(1) The provisions of the Industrial Disputes Act, 1947 shall apply to matters arising in respect of every industry premisses.

(2) Notwithstanding anything contained in sub-section (*1*) a dispute between an employer and employee relating to—

(*a*) the issue by the employer of raw materials to the employees,

(*b*) the rejection by the employer of Beedi or Cigar or both made by an employee,

(*c*) the payment of wages for the beedi or cigar or both rejected by the employer shall be settled by such authority and in such summary manner as the State Government may by rules specify in this behalf.

(3) Any person aggrived by a settlement made by the authority specifaied under sub-sec. (*2*) may prepare a party No. 1 to such authority and within such time at the State Government may, by notification in the official Committee specify in this behalf.

(4) The decision of the authority specified under sub-section (*3*) shall be final".

16. It we consider the object of sec. 39 then the provisions of I. D. Act are applicable. Sub-section 2 restricts the application of I. D. Act only in particular issue. 'o' issue of raw material, issue in regard 'o'standered of bidi and cigar which is manufactured and the issue is regard to the part for bidi and cigar workers. But it does not relate to the clouser of the industry. Therefore, even if no read the provisions of section 39 then also the present issue whether the clouser is proper and legal is not covered under the bar laid down under section 39. In regard to sec. 31 of the said act what is said down is that no employer shall displence with the services of the employee who has been employed for a period of month or more except with a reasonable case without giving such employee at lease and month notice or pay in lion of each notice. It we consider this action then it is related to the ointment of the employee. However, even it we couse dot sec. 31 then what one each there is whenever the provision of the workers are required to be terminated or the workers are to be retrenched then notice and retrenchment Compensation that was the provisions. However, it does not mean that reference is not maintainable or the provisions of the I. D. Act are not applicable.

17. Here in this case at hand the closure is affected on 1st September 1980. Section 25-o is substituted by the I.D. Amendment Act, 1982. Therefore, in the present case at hand old section 25-o of I.D. Act will be applicable. There is a settled distinction in between new section 25-o and the old section 25-o of the I.D. Act. old Sec. 25-o reads as under :

Sec. 25-o : Ninety day's notice to be given of intention to close down any undertaking —

"An employee who intends to close down an undertaking of an industrial establishment to which this chapter applies shall serve, for previous approval at least ninety days before the date on which the intended closure is to become effective, a notice in the prescribed manner, on the appropriate Government standing clearly the reasons for the intended closure of the undertaking."

18. What it denotes from this section is that 90 days notice is required to be given to the Govt. above intention to close down any industry. The entire evidence of witness No.1 for party No.1 is totally silent in regard to the fact that when such notice was given, the copy of that notice is also not produced on the record by the party No.1. The entire evidence of witness No.1 citrao is relating to now the work was our ledout, how many bidies were usually manufactured, which center are closed down but the entire examination -in-chief is silent alert notice is 25(o) The company never gave any notice disclocing is intention to close down undertaking that factor is also not brought on record. When the period of notice expired that evidence is also not brought on records. Here in this case if we consider the provision of section 25-o (1) then apperently it is clear that nothing is on record to know that the employer even disclosed its intention to close down undertaking by issuing notice to the appropriate Government creating clearly the reasons for intended closure of the undertaking. The question about the section of Government will be the letter stage. Whether on such a notice what action the appropriate Government took Wheather it

is satisfied or not that will be the subsequent action but first of all the employers is required to give 90 days notice disclosing the intention to close down undertaking from such and such date. In the present case at hand as that was not brought on record the question of referring the matter to this court will not be there. After the order of Government there is an appeal before this court. Therefore , this reference is the premature reference. First the appropriate Government has to decide whether the closure affected is proper or act as contemplated under section on 25-o (2). If we consider OC.35-PPA then after that closure if the compensation is not given than the aggrieved party, i.e., the employee he can knock the door of the labour Cout to claim compensation under section 33-C-(2).Considering this aspect the reference is itself premature and not maintainable. Here in this case only one witness is examined by the party No.1 and closed its side by filing pursis Exh. 60, Whereas the party No.2 from its side no one entered in the witness box and closed its side by filing pursis Exh.67. Unfortunately from the side of party No.2 even there is no argument in regard to Section 35-o, i.e. the old section regarding the procedure for closure.

19. In the present case at hand, it has been brought on record that Exh.39 is an application moved by the Party No.1 and thereby M/s. Mohanlal Hargovinddas Tobacco Products Pvt.Ltd. Condia informed the court that w.e.f. 23rd September 1982, the name of company is changed to M/s. Kohinoor Tobacco Products Pvt.Ltd. and it has been recorded as such under the provisions of the companies Act. party No.2 is aware of the same and by this application Exh.39 the alleged new employer request the Court to direct the party No.2 Union to take appropriate action for this change. After that order the union moved an application on 4th April 1990 for proceeding further with reference in the old name of the establishment and union pointed out that though it has moved the State Government till date i.e. till 4th April 1990 no order has been communicated by the State Government Whether it has changed the name or not. It means that the latched are on the part of the State Government. Till today none from the side of the State Government turned up to intimate that any change is effected by the State Government. At page No. 9 in the judgement of the writ petition No. 2727/91 direction was given that the referance court shall not withheld the hearing before it only because such order of the State Government is get to be passed or only because such order is not received. Due to this reference court proceeded further and decided the reference in the old name.

20. Considering all those factors, in my candid opinion, the reference so made to this Court is not maintainable. With the result I answer the issue No.3 in the negative. The Legability and propriety of the closure cannot he considered in this reference in view of the findings recorded below point No. 3 and hence I held that the point Nos. 1 and 2 they became redundant.

21. With the result the reference is not coint inable in fact and in law and accordingly the reference is disposed of parties to bear their own costs.

V. C. KHARE,
Presiding Officer,
Industrial Tribunal, Nagpur.

Nagpur,
dated the 8th March 2005.

Additional Commissioner of Labour,
Nagpur.

ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 17th May 2005.

NOTIFICATION

No. ALC/ADJ/PUB/IT/Nag/6/05.— in pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) *read* with Government Notification, Industry, Energy and Labour Department, No. IDA/2002/ 5686/ (2882) Lab-3, dated-19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court, Nagpur reffered for adjudication by the Additional Commissioner of Labours, Nagpur in reference IT/1/93 in the Industrial Dispute between M/s. General Manager, Navbharat, Hindi Daily, Nagpur, and Navbharat Shramik Sangh, Nagpur.

BEFORE THE INDUSTRIAL TRIBUNAL, NAGPUR

PRESIDED BY SHRI B. A. SHAIKH, B.Sc., LL.M.

Reference (IT) No. 1 of 1993.—Adjudication Between Navbharat Hindi Daily, Cotton market, Nagpur through its General Manager.— *Party No.1.*— And their Workmen Represented by Navbharat Shramik Sangh, C/o. House of Shri Dashrathsingh, S/o. Bhikusingh Dode, Plot No. 11, Bhagwannagar, Vasantnagar Road, Nagpur 440 027 through its General Secretary—*Party No.2.*

IN THE MATTER OF REFERENCE UNDER SECTION 10(1) (d)
OF THE INDUSTRIAL DISPUTS ACT, 1947.

Appearances.— Shri Thakur Advocate for party No. 1.

Shri Atre Advocate for party No. 2.

Award

(Passed on 2nd April 2005)

1. This is a reference made by the Government of Maharashtra under Section 10(1)(d) of the Industrial Dispute Act, 1947, (for Short I. D. Act) for the adjudication of an Industrial Dispute between the parties over the demands set out in the Schedule below the reference orders.

2. The facts leading to the dispute in brief are as under.

3. The party No. 1 is Hindi Daily news paper namely Navbharat, Whereas the Party No. 2 is a Union of the workmen working in the printing press of the Party No. 1. The Party No. 2 raised two demands. The demand No. 1 is that the workers are getting paid leave (Earned Leave) as per the provisions of factories Act, 1948. The workmen are entitled to one day paid leave for very 20 days of work performed by them during the previous Calender year. According to the workers, there is no other paid leave available to them. However, they submitted that in order to enable the workers to meet their family needs and other obiligation, they are required 30 days paid leave in-addition to 15 days causal leave and therefore, their first demand is for granting them 30 days paid leave and 15 days causal leave.

4. The second demand raised by the workers is that they be given 30 days paid sick leave and so also 15 days additional sick leave with 50 percent wages. According to the workers presently no sick leave is available to them and therefore, they have to proceed on leave without pay if they fall sick. So also they submitted that they are required to rush back to their duties without taking proper rest, even when the rest is recommended by Doctor. They thus, submitted that it affects the efficiency of the workmen and functioning of the Industry.

5. No conciliation was arrived at before the conciliation officer and therefore, the Government of Maharashtra referred the said dispute to this tribunal for adjudication over the said two demands.

6. The party No. 2 namely the union of the workers filed its statement of claim at Exh. 5.

7. The Party No. 1 filed its written statement at Exh. 9. First objection raised by the party No. 1 is that it has been wrongly arrived in the reference as M/s. Navbharat Hindi Daily. According to it, Navbharat Hindi Daily is the name and title of the news paper, which is published daily in Hindi from Nagpur. The submission of the Party No. 1 in brief is that the establishment which publishes the aforesaid news paper from Nagpur is Navbharat Press (Nagpur). The Editorial staff and the Administrative staff are the employees of Navbharat Press, Nagpur where as employee working in the printing press are the employees of Navbharat Press Pvt. Limited. Navbharat Press Private Limited is registered under Factories Act, 1948, and the facilities to the workers of the said printing press are being extended as per the provisions of the Factories Act. So far as the demand No. 1 is concerned, it is the case of the Party No. 1 that the workers of the printing press are getting earned leave in the region to the extent of 15 to 20 days in a year, and that there is no provisions for grant of causal leave to the said employees under the Factories Act, 1948. It is denied that the workers are loosing their wages because of absence of causal leave and sufficient leave.

8. So far as the demand No. 2 is concerned it is the case of the party No. 1 that all the workers working in the printing press are covered under the Employees State Insurance Act and are enjoying medical benefits as provided for in the scheme of the said Act. Therefore, the party No. 1 submitted that grant of sick leave to the employees cannot be acceded. It is further submitted by the party No. 1 that the government has introduced many legislation which are benifitial to the employees of the Industrial establishment and therefore, grant of additional benefits would reduced the efficiency of the out-put of the employees which is injurious to the Industry. Thus, the party No. 1 in brief submitted that the facilities provided are sufficient for the employees and hence, the reference may be answered in negative.

9. The party No. 2 examined two witness namely Dashrathsingh Bhikusingh Dode at Exh. 14 and Ajay Gunwantrao Raut at Exh. 24 and produced a copy of agreement Exh. 26, entered into between the management of another news paper namely Hitwada and their workers. On the other hand the party No. 1 examined only one witness namely Laxmikant Gopalji Rao by filing his affidavit at Exh. 40.

10. I have heard Mr. S. D. Thakur, the Learned Advocate appearing for the party No. 2 and Mr. Atre, the Learned Advocate appearing for the party No. 1. I have also perused all the papers placed before me. The issues that arise before me for adjudication are as under. My findings are also recorded against them for the reasons to follow :—

Issues	*Findings*
1. Whether the workers of the establishment of the printing Press namely Navbharat Press Private Limited, are entitled to the 30 days paid leave and 15 days causal leave as per demand No.1	No
2. Whether the said workers are entitled to the 30 days sick leave with full wages and 15 days sick leave with half pay ?	No
3. What order ?	As per final award.

Reasons

11. The first objection raised by the Party No.1 is about its correct title in the reference made to this tribunal. However, it is not disputed that initially Navbharat Hindi Daily was started from the year 1937 and at the time it was a proprietory concern. The witness of the Party No.1 in his cross-examination (Exh. 40, Para.11) admitted that the said news paper became the partnership concern in the year 1974 and that with effect from 1st January 1983, the Party No.1 Navbharat Press Nagpur came in to existance. He further admitted that Nav Bharat Hindi Daily was divided into 4 firms with effect from 1st January 1983 and workers were also divided in those four firms. He further admitted that no notice of change under Section 9(A) of I. D. Act was given to the workers before they were divided and allotted to those firms. In view of the aforesaid admission of the witness of Party No. 1, it is clear that the initially one establishment of News paper namely Nav Bharat Hindi Daily was divided into four establishment without any notice of change to the workers. I thus find that since the title of the party No.1 which was inexistance initially, is described in the reference, there is as such no illegility going to the root of the reference. In my view the objection raised by the Party No. 1 regarding its title in the reference, is not of any consequences. I thus find that the reference as a stands in the name and title of party No. 1 as Nav-Bharat Hindi Daily can be considered under the provisions of law, and thus, it is not bad in law.

12. The Learned Advocate of the party No. 2 i.e. workers of printing press has relied upon the copy of the agreement Exh. 26, which is proved by the witness No. 2 of the party No. 2. The said witness No. 2 is the employee of another news paper establishment namely, Hitwada. As per that agreement Exh. 26, settlement was arrived at between the management of the Hitwada News Paper and the Union of the workers of Hitwada, News Paper. In that agreement the management agreed to increase the leave with effect from 1st January 1990. The management agreed to grant 24 days earned leave, 9 days casual leave, 7 days medical leave, and 14 days half pay leave to the workers.

13. The Learned Advocate of the party No. 2 submitted that as the news paper establishment of Hitwada is also situated at Nagpur, where the establishment of the party No. 1 is also working the leave as agreed as per agreement Exh. 26 can be also granted to the Party No. 2. In support of his submission he has relied upon the observation made in Rai Bahadur Diwan Badri Das and Others *V/s.* Industrial Tribunal, Punjab, and others. 1962 IT LLJ 366(S.C.) Following are the observation made in it.

> " In the instant case all the workmen in the press section are governed by the same conditions of service except the leave facilities, in respect of which alone a distinction was made between workmen employed on or before 1st July 1956 and those employed after that date.Generally, in the matter of providing leave rules, industrial adjudication prefers to have similar conditions of service in the same industry situated in the same region. The fact is that the very same concern provides for better facilities of earning leave to a section of its employees when other terms and conditions of service are the same in respect of both the categories of employees. It is not difficult to imagine that the continuance of these two different provisions in the same concern is likely to lead to dissatisfaction and frustration amongst the new employees. It cannot be denied that the existence of industrial peace and harmony and the continuance of the said peace and harmony are relevant factors, but their importance should not be unduly exaggerated. If a frivolous demand is made by the employees and it is accompanied by a threat that non-compliance with the demand would lead to industrial disharmony or absence of peace, it would be unreasonable to treat the threat as relevant in

deciding the merits of the demand. In this connection, it is necessary to remember that the continuance of harmonious relations between the employer and his employees is treated as relevant by industrial adjudications, because it leads to more production and thereby has ahealthy impact on national economy, and so it is necessary that in dealing with several industrial disputes, industrial adjudication has to bear in mind the effect of its decisions on national economy. In their zest to fight for their respective claim, the parties may choose to ignore the demand of national economy, but industrial adjudication cannot. If the demand is plainly frivolous, it has to be rejected whatever the consequences may be. In the instant case the argument that the continuance of two different provisions would lead to disharmony cannot be treated as frivolous. No reason or justification was shown to make discrimination in regard to leave privileges. Further it was the case of the employer that the leave privileges given to the old employees were too generous or extravagant. Earned leave provided by S. 79 of the Factories Act is the minimum statutory leave to which employees are entitled and if the appellants thought it necessary to provide for additional earned leave to their old employees, there is no reason why there should not be made a similar provision in respect of the new employees as well. Further the financial liability imposed on the employer by the award in respect of leave privileges was not heavy."

14. I have gone through the aforesaid decision. In that matter before the Hon'ble Supreme Court, it was found that though the workers were having similar condition of service, there was discrimination in grant of leave to them. This is not the case in the present matter. The party No. 2 is relying on the agreement Exh. 26 which is entered into between the workers of the establishment of another news paper namely Hidwada, and the management of the said news paper. The said agreement Exh. 26 about the grant of leave to the workers of other establishment cannot be said to be the basis or criteria for granting the similar leave to the workers of the party No. 2. The contract or agreement about service condition of one independent and distinct establishment cannot be enforced upon the management of the another establishment. No preposition of law is laid down in the aforesaid decision of the Hon'ble Supreme Court which is helpful to the party No. 2. In my view the said decision is of no assistance to the party No. 2 as the facts and circumstances of the present matter are totally different from those of the aforesaid case.

15. It is not disputed that the workers of the printing press are getting leave as per the provisions of section 79 of the Factories Act, 1948. The said section *inter alia* provides that and adult worker is entitled to one day leave with wages for every 20 days of work performed by him during the previous Calendar year, which is minimum statutory leave provided to the workers.Moreover it is also not disputed that under the scheme of the E. S. I. Act, certain provisions are made for enjoying medical benefits. Moreover monetory benefits in the form of compensation are also given to those employees to whome E.S.I.Act is applicable. The medical treatment under that Act is provided not only to the worker but also to his whole family.

16. According to the Party No. 2 the statutory leave provide under Section 79 of Factories Act is not sufficient to meet their requirements. However, I find that the another aspect which is to be considered is as to whether the additional benefits about leave if given to the workers, then would it reduce the efficiency and output of the employees. The party No.2 has not demonstrate before this tribunal as to how granting of additional leave benefits would not reduc the efficiency and the output. On the contrary it is manifest that due to granting of such additional benefits as per demand No. 1, the output of the employees would be reduced, which is injurious to the industry.

Thus I find that the party No.1 has not placed sufficient meterial before this tribunal to concede to the demand No. 1 and 2 over riding the contract between the said party No. 2 and the party No. 1 governing the service condition of the workers. Moreover, I have also found that workers covered under the E.S.I. Act can also avail, the benefits whenever they fall sick. Under all these facts and circumstances I hold that the demand No.1 and 2 cannot be conceded to and accordingly the aforesaid Issue No.1 and 2 are answered in negative. The reference therefore deserves to be answered in negative and accordingly I proceed to pass the following award :—

Award

(1) The demand No. 1 and 2 are not conceded to and accordingly the reference fails and answered in negative.

(2) The party No. 2 is thus not entitled to the increase of leave as per the aforesaid demand No. 1 and 2.

(3) Both the parties shall bear their own costs.

(4) The reference is disposed of accordingly.

B. A. SHAIKH,
Presiding Officer,
Industrial Tribunal, Nagpur.

Nagpur, dated the 2nd April 2005.

Additional Commissioner of Labour,
Nagpur.

ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 7th July 2005

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ Amar/7/05.—in pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industries, Energy and Labour Department, No.IDA/2002/5686/(2882)/Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the enclosed Award of the Industrial Court, Amravati referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/2/86 in the Industrial Dispute between M/s. Director, Shri Mahila Grih Udyog Lijjat Papad, Kendra, Amravati and General Secretary, Amravati, General Labour Union, Amravati.

BEFORE SHREE S. S. HINGNE, CHAIRMAN,
INDUSTRIAL TRIBUNAL, AMRAVATI
(INDUSTRIAL COURT, AMRAVATI)

REFERENCE (IDA) No. 2 OF 1986.—Director, Shri Mahila Grih Udyog, Lijjat Papad Kendra, Amba Peth, Amravati. —*Party No.1.*— And Workmen, through Shri M. J. Pathan, General Secretary, Amravati General Labour Union, Rajkamal Chowk, Namuna, Amravati.— *Party No.2.*

CORAM.— Shri S. S. Hingne, Chairman.

Advocates.— (1) Shri P. P. Mahalle, Advocate for Party No.1.

(2) Shri N. A. Taori, Advocate for Party No.2.

AWARD

(Passed on 11th April 2001)

(1) This reference under Section 10(1) (d) of the Industrial Disputes Act referred by the Government of Maharashtra, Industries Energy and Labour Department, Mantralaya, Mumbai for adjudication of the dispute between employer and its workmen.

(2) During the course of proceedings, Party No.2 through its General Secretary has filed pursis (Exhibit 17) submitting that the matter is settled out of Court and therefore they do not want to prosecute the matter further. In view of the pursis filed by party No. 2, the following order is passed :—

Award

In view of pursis (Exh. 17) filed by party No. 2, the reference case is dismissed for want of prosecution.

Copies of this Award be sent to the Government.

S. S. HINGNE,
Chairman,
Industrial Tribunal, Amravati.
(Industrial Court, Amravati).

Dated the 11th April 2001.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 11th August 2005.

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/Nag/10/05.—in pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industries, Energy and Labour Department, No.IDA/2002/5686/(2882)/Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/2/98 in the Industrial Dispute between M/s. Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur and Maharashtra S.T. Kamgar Sanghatna, Nagpur.

INDUSTRIAL TRIBUNAL, MAHARASHTRA, NAGPUR

PRESIDED OVER BY SHRI D. H. DESHMUKH, B.A., M.Com., LL.B., D.B.M., M.I.R.P.M.

REFERENCE (IT) No. 2 OF 1998.—Adjudication between Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur Division, Nagpur—*Party No.1* And It's Workmen, represented by Maharashtra S.T. Kamgar Sanghatna, Shukrawar Chowk, Nagpur— *Party No.2.*

IN THE MATTER OF REFERENCE UNDER SECTION
12(1)(d) OF THE INDUSTRIAL DISPUTES ACT, 1947

Appearances.— Mr. P. N. Khadgi, Advocate for Party No. 1.
Mr. R. B. Khan, Advocate for Party No. 2.

AWARD

(Passed on 4th November 2004)

This is a reference made by the Deputy Commissioner of Labour, Industrial Relations, Mumbai for adjudication of an industrial dispute between the Divisional Controller, M.S.R.T. Corporation, Nagpur and the Divisional Secretary, Maharashtra S. T. Kamgar Sanghatna.

2. The Union has opposed the dispute on behalf of one Shri Bismillah Saheb Ahmed Saheb who is claimed to be its member. The union has contended that Bismillah Saheb was employed with the Corporation as a Conductor and he was chargesheeted for the misconduct of carrying 11 passengers without ticket. Thereafter the Corporation held an enquiry in the absence of the delinquent Bismillah and imposed punishment of stoppage of three increments with cumulative effect on 7th August 1989. It is contended that soon thereafter the delinquent was removed from services and having no means of lively-hood he had to leave the place and could not keep contact with the union. Thereafter, the disputes is raised in the year 1997. The union has further contended that the service record of Bismillah Saheb was clean. The charge was also fales in as much as the delinquent was on duty in a City Bus and he had not received the fare from the concerned passengers, to whom he was going to issue tickets before reaching their destination. Therefore, there was no misconduct at all. It is further contended that the delinquent was not well and was under treatment and had therefore applied for adjournment in the enquiry, but the enquiry was concluded exparty. The enquiry thus was not fair and proper. In sum the union has requested for setting aside the order dated 7th August 1989.

3. The Corporation has opposed the claim denying all adverse allegations and contending that the delinquent Bismillah Saheb had committed the misconduct of a serious nature which was proved in an inquiry held in a fair and proper manner, and further his past service record too was bad and therefore even dismissal would have been justified. The Corporation has denied that the delinquent was removed from service and had therefore to suffer hardship etc. It has been contended that the reference is hoplessly time barred. It is also denied that the delinquent could not attend enquiry due to illness or treatment. The corporation has claimed rejection of the reference.

4. The issues and my findings are thus ;

Issues	*Findings*
1. Whether the Party No. 2 has proved that the enquiry initiated against the workmen Bismillahsaheb s/o. Ahmedsaheb, conductor was not fair, proper and based on principals of natural justice ?	Yes.
2. Whether the findings of the Enquiry officer are unjustified ?	Does not arise.
3. Whether the impugned order is illegal/unjustified ?	Yes.
4. Whether Party No. 2 workmen is entitled to the reliefs as prayed for ?	Yes.
5. What order ?	As per final order.

Reasons

5. The delinquent Bismillah Saheb has alone adduced oral as well documentry evidence. I heard the learned counsel for both sides. I propose to deal with the issues together.

The desposition of Bismillah Saheb indicates that during the progression of the enquiry he fell sick and therefore sent leave application on medical ground, and the copies of those application were preserved, and they have been produced (marked as Exh. U-17A collectively). The Corporation had not informed him about the rejection of the leave applications, and he did not know about the enquiry nor was given any document. In the cross-examination it has come that Bismillah was on leave since prior to the receipt of the chargesheet and he did not remember the period. Further he was sick and therefore could not give explanation to the chargesheet, and the enquiry was held experte. He denies a suggestion that the present claim is false.

6. Now it would be seen from the cross-examination that the document produced at Exh. U-17 A collectively have not in any manner been challenged by the Corporation. The documents indicate that Bismillah Saheb had really got some health problem and was therefore visiting the Mental Hospital Nagpur for treatment. Now the Corporation has not produced any evidence, not even the enquiry proceedings. The original enquiry proceedings have got to be in possession of the corporation. It is the Corporation which is experted to produce the enquiry papers, especially when the enquiry was experte. So in a case where neither the enquiry proceedings are produced nor any evidence in rebuttal, there is no alternative but to accept the contention of Bismillah Saheb that he was not given fair opportunity to defend himself in the domestic enquiry. I therefore held that the enquiry into the chargesheet was not fair and proper. There is no prayer for permission to lead evidence to justify the impugned action. Consequently the impugned punishment is proved to be wholly unjustified and unsustainable as no charge is proved. There is no dispute that by order dated 7th August 1989 three increments of the delinquent were withheld by way of

punishment. The said order will now have to be set aside. The plea relating to limitation raised in the written statement of the corporation was not pressed during argument. Even otherwise there is no limitation prescribed in law for raising a dispute, and besides the union has explained with some reasons why the dispute could not be raised immediately. in the facts and circumstances of the case I am not inclined to reject the claim only on the ground of limitation. having considered all the aspects and the submissions made by Mr. Khan and Mr. Khadgi the learned counsels I conclude with the following award.

Award

(*i*) The Referance is answered in the affirmative.

(*ii*) The order dated 7th August 1989 imposing the punishment of withholding of three increment of Bismillah Saheb S/o. Ahmed Saheb is hereby quashed and set aside.

(*iii*) The award be sent to the Government.

D. H. DESHMUKH,
Presiding Officer
Industrial Tribunal, Nagpur.

Nagpur,
Dated 4th November 2004.

Additional Commissioner of labour,
Nagpur.

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY SHRI PARSHURAM JAGANNATH GOSAVI, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004, EDITOR : SHRI PARSHURAM JAGANNATH GOSAVI.